IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5857 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RS ARYA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS HARSHAL PANDYA for Petitioner(s) : 1,

MR DA DESAI, ASST.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/01/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order directing the respondents to consider the period of officiation in the cadre of Section Officer from 11-11-78 to 16-6-79 for the purpose of

granting the benefit of higher pay scale. It is also further prayed to quash and set aside the order passed by the respondents dated 29-6-2006 and consequently to restore the order dated 17-5-92 as amended on 28-12-92.

2. The facts leading to the present Special Civil Application in nutshell are that the petitioner was appointed as Assistant on 20th May 1970 in the Sachivalaya and was promoted as Section Officer vide order dated 8-11-78. He was reverted from the post of Section Officer to the post of Assistant on administrative ground vide order dated 16-6-79. He was again promoted as Section Officer vide order dated 3-10-79. It is submitted that at the time of promotion in October 1979, the pay of the petitioner was fixed in accordance with BCSR Rule 41-A. That since the petitioner had worked on the post of Section Officer from 11-11-78 to 16-6-79, the said period of 8 months was considered for the purpose of calculating the next date of increment in accordance with BCSR rule 50. Accordingly, the next date of increment was fixed in the month of February 1980. The petitioner was promoted as Under Secretary vide order dated 6-12-1990 and he took over as Under Secretary on 7-12-1990. It is submitted that on introduction of Higher Grade Scheme vide resolution dated 5-7-91, commonly known as 9-18-27 scheme, the petitioner was entitled for the first higher grade scale of Under Secretary w.e.f. February 1988 and accordingly the order was passed to that effect on 15-7-1992 as amended by order dated 28-12-1992 and it was ordered that the petitioner would be entitled to the benefit of the higher pay scale of Under Secretary w.e.f. 1-2-1988. It is submitted that thereafter on the basis of the subsequent government resolutions dated 16-8-94, the said order came to be cancelled and a fresh order came to be passed dated 29-6-96 whereby the period for which the petitioner worked as Section

Officer i.e. 11-11-78 to 16-6-79 was not considered for the purpose of counting the 9 years period for granting the benefit of higher pay scale and the order is passed that the petitioner would be entitled to the benefit of the higher pay scale w.e.f. 3-10-88. It is submitted that thereafter the petitioner submitted representation which was turned down and therefore, the present petitioner has preferred the present Special Civil Application.

3. Relying upon the government resolution dated 5-7-91 and BCSR Rules 41 and 50, the learned advocate appearing on behalf of the petitioner has vehemently submitted that the period of officiation in the cadre of Section Officer from 11-11-78 to 16-6-79 was required to be counted for the purpose of calculation of 9 years for granting the benefit of higher pay scale in the scale of Under Secretary and the orders dated 17-5-92 as amended on 28-12-92 were just and proper and were not required to be cancelled. It is submitted that even the interpretation of the government resolution dated 16-8-94 is also not well founded and in spite of the fact that there is no provision that an employee should have been worked continuously for 9 years for the purpose of getting the benefit of higher pay scale, the respondents construed the same and therefore, it is requested to quash and set aside the order dated 29-6-1996 and to restore the orders dated 17-5-92 as amended on 28-12-92.

4. Petition is opposed by Shri Dipan Desai, learned AGP. Relying upon the government resolution dated 16-8-94, more particularly 3(2), 3(7) and 3(9), Shri Desai has submitted that considering the resolution dated 16-8-94 by which the earlier government resolution dated 5-7-91 was cancelled *ab initio* and new scheme was introduced w.e.f. 1-6-1987

and the case of the petitioner is required to be considered in view of the government resolution dated 16-8-94 and therefore, the impugned order dated 29-6-96 is just and proper and as the earlier orders dated 17-5-92 as amended on 28-12-92 were not in accordance with policy of the government with regard to granting the benefit of higher pay scale. It is the contention on behalf of the respondents that for the purpose of granting the benefit of higher pay scale, a candidate must eligible for promotion to the next post and as the petitioner was reverted by order dated 16-6-79 which has not been challenged by the petitioner and the petitioner was again promoted on 4-10-79 considering 4-10-79 to be the regular date of promotion, the impugner order dated 29-6-96 is just and proper considering the 9 years of the petitioner as a Section Officer w.e.f. 4-10-79. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that the petitioner came to be promoted to the post of Section Officer by order dated 8-11-78 and he actually was promoted on 11-11-78. It is not the case on behalf of the respondents that the petitioner was reverted as the petitioner was not eligible. Petitioner came to be reverted by order dated 16-6-79, as due to abolition of certain posts, other seniors to the petitioner were required to be accommodated and therefore, the petitioner came to be reverted. Thus, the petitioner was reverted as the requisite number of posts were not vacant. The petitioner was again promoted to the post of Section Officer on 4-10-79. On going through the government resolution dated 16-8-94, it does not spell out

that for the purpose of granting the benefit of higher pay scale, an employee has to work continuously in the same cadre and in the same pay scale. On the contrary, what is provided in Clause 3(2) and the said resolution that if an employee has worked in the same cadre and in the same pay scale for 9 years, he is entitled to the benefit of higher pay scale. In the present case, the petitioner initially worked as a Section Officer for the period between 11-11-78 to 16-6-79. However, for the reasons as stated above, the petitioner came to be reverted and again the petitioner was promoted to the post of Section Officer on 4-10-79. Therefore, the period between 11-11-78 to 16-6-79 i.e. period for which the petitioner has worked as Section Officer, is required to be counted for the purpose of granting the benefit of higher pay scale. The petitioner was rightly granted the benefit of the period between 11-11-78 to 16-6-79 vide order dated 17-5-92 as amended on 28-12-92, meaning thereby the petitioner was rightly granted the benefit of higher pay scale w.e.f.1-2-88. The respondents have committed an error in not considering the period of officiation in the cadre of Section Officer from 11-11-78 to 16-6-79 for the purpose of considering the benefit of higher pay scale. Under the circumstances, the order dated 29-6-96 is required to be quashed and set aside and the orders dated 17-5-92 as amended on 28-12-92 are required to be restored. At this stage, Shri Dipan Desai, learned AGP has apprehended that the petitioner might claim the seniority w.e.f.11-11-78 on the post of Section Officer. Ms Harshal Pandya, learned advocate appearing on behalf of the petitioner has submitted that the aforesaid period of officiation in the cadre of Section Officer from 11-11-78 to 16-6-79 be considered only for the purpose of granting the benefit of higher pay scale and the said period may not be counted for the purpose of

seniority. Under the circumstances, the apprehension on the part of the learned AGP is not well founded and/or the same is clarified by the petitioner himself.

7. For the reasons stated above, the petition succeeds. The respondents are directed to consider the period of officiation in the cadre of Section Officer from 11-11-78 to 16-6-79 for the purpose of granting benefit of higher pay scale only. Meaning thereby, the impugned order dated 29-6-96 is hereby quashed and set aside and the orders dated 17-5-92 as amended on 28-12-92 are hereby restored. Rule is made absolute to the aforesaid extent. No costs.

(M.R. SHAH, J.)

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